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Supreme Court, U.S.
FILED
JUN 30 1992
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(9)

NO. 91-719

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

AL C. PARKE, WARDEN, PETITIONER

versus

RICKEY HAROLD RALEY, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

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Rule 15.7..... 1

Medina v. California,
51 Crim.L.Rep. 2204 (June 22, 1992)..... 1

Spencer v. Texas,
385 U.S. 554 at 564 (1967)..... 1

Marshall v. Lonberger,
459 U.S. 422 at 438, n. 6
(1983)..... 1

Patterson v. New York,
432 U.S. 197 (1977)..... 1

Martin v. Ohio,
480 U.S. 228 at 232 (1987)..... 2

Mathews v. Eldridge,
424 U.S. 319 (1976)..... 2

Commonwealth v. Gadd,
665 S.W.2d 915 at 917-918 (Ky. 1984)..... 2

Robards v. Rees,
789 F.2d 379 at 385-386
(6th Cir. 1986)..... 3

Lewis v. United States,
445 U.S. 55 (1980)..... 3

Pursuant to Rule 15.7 of this Court, the Attorney General of the Commonwealth of Kentucky as counsel for petitioner, Al C. Parke, Warden of the Kentucky State Reformatory, hereby supplements his previously filed briefs for petitioner. The purpose of this supplemental brief is to discuss the Court's opinion in Medina v. California, 51 Crim.L.Rep. 2204 (June 22, 1992). A copy of that opinion was not available to counsel when the Reply Brief for Petitioner was mailed to the Court on June 26, 1992.

In Medina v. California, supra, the Court held that the State of California could consistent with the Federal Due Process Clause require that a criminal defendant bear the burden of proving that he was incompetent to state trial by preponderance of the evidence. The Court relied in part upon Spencer v. Texas, 385 U.S. 554 at 564 (1967); Marshall v. Lonberger, 459 U.S. 422 at 438, n. 6 (1983);

Patterson v. New York, 432 U.S. 197 (1977); Martin v. Ohio, 480 U.S. 228 at 232 (1987). Likewise, the Commonwealth (petitioner) has relied upon the same authorities. (See Brief for Petitioner, pp. 17-18, 21-22, 31-32.)

In Medina, the Court concluded that requiring the prosecution to prove competency to stand trial was not necessary for "deterring lawless conduct by police and prosecution." The Court rejected the argument that the standards of Mathews v. Eldridge, 424 U.S. 319 (1976), should be applied, and instead applied the analysis of Patterson v. New, and Martin v. Ohio, supra. Raley (Respondent) like Medina, has relied upon Mathews v. Eldridge. (Brief for Respondent, pp. 24-27.)

The Kentucky Supreme Court has concluded the validity of a prior conviction is not an element of the Persistent Felony Offender statute (KRS 532.080). Commonwealth v. Gadd, 665 S.W.2d 915 at 917-918 (Ky. 1984). That determination is not contrary to the express language of the

statute and hence does not violate due process. See Martin v. Ohio, supra. That determination is not patently unreasonable so as to violate the Due Process Clause. See Robards v. Rees, 789 F.2d 379 at 385-386 (6th Cir. 1986), discussing Lewis v. United States, 445 U.S. 55 (1980); and Brief for the United States, pp. 11 and 12, n.2, also discussing Lewis.

For the foregoing reasons, the Court should reject Raley's argument based upon Mathews v. Eldridge, supra.

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